

IT 95-7  
Tax Type: INCOME TAX  
Issue: Federal Change (Individual)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	Docket No. XXXXX
	)	SSN: XXXXX
v.	)	
	)	
XXXXXX	)	
	)	Daniel D. Mangiamele
Taxpayer	)	Administrative Law Judge
	)	

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on October 7, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that she had failed to pay the entire tax and penalty due on her Illinois Income tax return after a completed and settled federal audit change for the year ending December 31, 1987 (hereinafter referred to as the "Taxable Year"). The Notice assessed tax, penalties under section 1005 and interest for income earned that year.

In support of her protest to the Notice of Deficiency, this taxpayer testified that there were four changes on her IRS audit, none of which had any affect on her Illinois adjusted gross income. Therefore, the following issues were raised at the evidentiary hearing: 1) whether the taxpayer has overcome the prima facie correctness of the Notice of Deficiency with sufficient evidence to show that the area of her disagreement including capital gains, legal fees, miscellaneous deductions and medical

adjustments were properly considered by the Department.

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The Department prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that for the year ending December 31, 1987, this taxpayer paid tax as filed in the amount of \$221.00 and the tax as corrected amounted to \$426.00 with additional tax due of \$205.00, plus a 1005 penalty of \$80.00 and interest thru 10/7/94 in the amount of \$117.00.

2. This taxpayer failed to pay Illinois Income Tax due as a result of an adjustment of taxpayer's taxable income to include a complete and settled federal change (RAR, Fed. 1040-X, etc.) and (penalty IITA sec. 1005).

3. Taxpayers area of disagreement which included capital gains, legal fees, miscellaneous deductions and medical adjustment were properly considered in Department's audit in determining a deficiency.

4. The taxpayer filed a timely protest to this notice, and hearing request.

5. The taxpayer failed to provide the Department with any documentation or evidence showing that the Departments audit was incorrect.

6. The Department taxed only the net change of \$8181.00 in schedule "c" which is the amount of adjustment made by the IRS.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

904 Deficiencies and overpayments.

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the

Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a Notice of Deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b)

The taxpayer argued she had four changes on her IRS audit, none of which had any affect on her Illinois adjusted gross income. In fact, there were seven original changes made by the IRS. These changes were composed of (4) income adjustments affecting adjusted gross income and (3) itemized deductions not affecting adjusted gross income. The IRS audit resulted in a corrected adjusted gross income of \$18,915.00 and corrected taxable income of \$3366.00. A review of the evidence indicates that the Department did not tax those items taxpayer complained of in her protest (Dept's Ex. No. 4) such as capital gains, legal fees, miscellaneous deductions and medical adjustments. The evidence submitted shows department only taxed the net change of \$8181.00 in schedule "c" which is the IRS adjustment.

These assertions, without any supporting documentation, are not sufficient to overcome the prima facie correctness of the Department's Notice of Deficiency. See, *Copilevitz v. Department of Revenue*, 41 Ill.2d 154 (1968) (In order to overcome the prima facie correctness of the Department's correction of returns, taxpayer "must produce competent evidence, identified with their books and records" showing that the Department's returns are incorrect). Oral testimony is not sufficient to overcome the prima facie correctness of the Department's determinations. *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App.3d 826 (1st Dist. 1988).

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized, as issued.

Daniel D. Mangiamele  
Administrative Law Judge